

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

<p>AMPEX CORPORATION,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>EASTMAN KODAK COMPANY, ALTEK CORPORATION and CHINON INDUSTRIES, INC.,</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>C.A. No. 04-1373-***</p>
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AMPEX’S OPPOSITION TO DEFENDANTS’ BILL OF COSTS

Pursuant to D. Del. LR 54.1(a)(3), plaintiff Ampex Corporation (“Ampex”) hereby opposes Defendants’ Bill of Costs (D.I. 501). Defendants seek an award of costs relating to depositions and demonstrative exhibits that far exceeds what is permitted under the Local Rules, and therefore their request for costs should be substantially decreased.

I. DEPOSITION COSTS

Defendants request \$59,255.39 for costs they allegedly incurred in connection with certain deposition transcripts cited in their claim construction and summary judgment briefs. Local Rule 54.1(b)(3) permits a prevailing party to recover the costs of taking a deposition only “where a substantial portion of the deposition is admitted into evidence at trial or otherwise used in the *resolution of a material issue* in the case” (emphasis added). Although defendants argue that they relied on substantial portions of 11 individuals’ depositions in obtaining summary judgment of non-infringement and defeating Ampex’s motions for summary judgment (D.I. 501 at 7), they do not even attempt to show that each of the 11 depositions was used to resolve a material issue. In fact, most of the depositions for which defendants seek costs were not used to resolve a material issue, and therefore those costs must be denied.

As defendants acknowledge, the Court granted only one summary judgment motion out of the seven that the parties filed (D.I. 501 at 4). That motion was defendants' Motion for Summary Judgment of Non-Infringement (D.I. 480), and non-infringement was the only material issue that the Court ever resolved. Under Local Rule 54.1(b)(3), therefore, defendants can only recover the reasonable cost of deposition transcripts that were substantially used in resolution of non-infringement. The only depositions that meet that standard were those of George Ligler and Charles Boncelet.

Furthermore, defendants seek costs for the Ligler and Boncelet depositions that go well beyond the "reasonable cost" permitted under Local Rule 54.1(b)(3). Those costs include "rush" transcript delivery and "interactive realtime" or "livenote" transcription (D.I. 501-2, Exh. C at Tab 1 and 3). Such costs are more than the "reasonable cost" permitted by the rule. *See Schering Corp. v. Zeneca Inc.*, C.A. 95-566-RRM at 2-3 (D. Del. Feb. 4, 1998) (denying deposition costs that included daily copy) (Exh. A). Also, defendants seek costs for videotaping the depositions, even though no videotapes were submitted with defendants' Motion for Summary Judgment of Non-Infringement. Thus, the costs for the Ligler and Boncelet depositions should be reduced by the following amounts:

Dr. Ligler

6/1/05	\$569	rush
	\$379	interactive realtime
	\$1948	videotaping
6/3/05	\$1113	videotaping
5/10/06	\$919	rush
	\$512	exhibits

	\$665	interactive realtime
	\$1587	videotaping
5/11/06	\$835	rush
	\$280	exhibits
	\$604	interactive realtime
Total:	\$9411	

Dr. Boncelet

4/26/06	\$572	Livenote
	\$53	exhibits
	\$1116	videotaping
Total:	\$1741	

Taking these reductions into account, defendants should not be awarded more than \$8506 in costs related to the Ligler and Boncelet depositions.

II. COPYING COSTS

Defendants seek copying costs pursuant to Local Rule 54.1(b)(5) for copies of pleadings and exhibits to pleadings filed with the Court (D.I. 501 at 16). The rule, however, provides only for the cost of copies of exhibits, but not for copies of pleadings. Therefore, defendants should be limited to \$694 for copying costs related to exhibits.

III. DEMONSTRATIVE COSTS

Ampex objects to all costs that defendants seek for demonstrative aids, totaling \$84,828.18. Defendants attempt to claim such costs under Local Rule 54.1(b)(6), as “costs of

exemplifications, maps and charts” and under 28 U.S.C. § 1920(4)¹. Defendants’ demonstrative aids, however, are not maps or charts, nor are they “exemplifications” under Local Rule 54.1(b)(5) because they were not attached to a document required to be filed with the Court. All that defendants argue, without any Delaware authority to support their request, is that they should be permitted to recover the costs because they used the demonstrative aids at the January 2006 tutorial and the July 2006 Markman and summary judgment hearing. That is not the standard, and defendants’ request should be denied.

CONCLUSION

For the foregoing reasons, Ampex respectfully requests that the Court modify Defendants’ Bill of Costs and award no more than the following amounts in costs:

Depositions	\$8506
Copies	\$694
Total	\$9200

¹ 28 U.S.C. § 1920(4) is merely permissive in its authority. Local Rule 54 reduces the scope of its grant and governs defendants’ request here.

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March 7, 2008
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CERTIFICATE OF SERVICE

I, Julia Heaney, hereby certify that on March 7, 2008, I caused to be electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following:

Collins J. Seitz, Jr., Esquire
Connolly, Bove, Lodge & Hutz LLP

and that I caused copies to be served upon the following in the manner indicated:

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